

REMARKS

The invention provides for *inter alia* herbicidal combinations comprising broad spectrum herbicides, such as, for example glufosinate, and a secondary herbicide, for controlling harmful plants in tolerant and resistant maize crops. Applicants discovered that particular combinations comprising broad-spectrum herbicides and safeners interact synergistically to combat weed growth in tolerant and resistant maize crops.

Appended hereto are data that support Applicant's contention that the inventive herbicidal combinations exhibit synergistic activity when compared to the individual components taken alone. Applicants will submit the data in verified form if requested by the Examiner.

It is believed that no further fee is required for consideration of this Amendment. If, however, an additional fee is due, the Assistant Commissioner is authorized to charge such fee, or credit any overpayment, to Deposit Account 50-0320.

Claims 16-42 are pending. Claims 16, 20 and 24 are amended to exclude a subset of herbicidal combinations. These amendments find support in the previously introduced provisos of claims 16 and 24. As the excluded combinations are described throughout the specification, no new matter had been added.

The Examiner is thanked for the indication that the subject matter of claims 21, 28, 35 and 36, drawn to the elected species, are allowable. Applicants cancelled claims 21, 28, 35 and 36, without prejudice or intention of creating estoppel, in order to present these claims in independent form. Thus, no new matter had been added. Further, since rewriting these claims do not narrow their scope, the application of the doctrine of equivalents is not affected.

Claims 24-26 and 29-32 are rejected under 35 U.S.C. §§ 102(a), (b), and (e) for allegedly being anticipated by Frisch et al. (U.S 5, 369,082, "Frisch") and claims 16, 18-20, 22, 24, 24-26,

29-32 and 37-38 are rejected under 35 U.S.C. §§ 102(a) and (e) for allegedly being anticipated by Lee et al (U.S. 6, 586,367, “Lee”). Applicants urge that amendments to claims 16, 20 and 24, wherein provisos were added in order to exclude the specific combinations mentioned in Frisch and Lee, render these rejections moot. Accordingly, the reconsideration and withdrawal of these rejections are requested.

Claims 16, 18-20, 22, 24-26, 29-32 and 37-40 are rejected under 35 U.S.C. § 103(a) for allegedly being unpatentable over Lee. Since Lee does not suggest to one of ordinary skill in the art that one could combine a particular herbicide with a particular safener and arrive at particular herbicidal combination that exhibits synergistic activity against unwanted plants in tolerant or resistant maize, Applicants urge that the rejection does not establish a *prima facie* case of obviousness and should be removed.

The Office Action states that Lee teaches “the combination of glufosinate with herbicides within applicant’s B classes . . . [and it] would have been within the skill level of the ordinary artisan to select related herbicides to combine with glufosinate for the control of weeds in crops such as maize” Id. (Office Action at page 5). The Office Action further states that “in view of the synergistic results disclosed in Lee et al it would appear that data demonstrating synergistic results for these glufosinate combinations would be expected.” Id.

Applicants respectfully disagree. Although Lee describes a number of synergistic herbicidal combinations, most of which are no longer claimed because of the provisos described above, these teachings are not supported by adequate biological examples since Lee only provides test data for pre- and post emergence treatments without naming crops, herbicidal mixture and detailed results. Hence, in contrast to the instant invention which provides ample teachings on specific combinations of herbicides and safeners for achieving synergistic activity,

Lee provides absolutely no direction or guidance to one of ordinary skill in the art as to which of herbicidal combinations described there would exhibit synergistic results for weed control in tolerant or resistant maize crops. Thus, at best, it might be "obvious to try" to select specific combinations from the long list of herbicides presented in Lee; however, "obvious to try" is not the standard of obviousness under the Statute. Thus, the rejection must fail.

Finally, even if it were held that the Lee establishes a *prima facie* case of obviousness, a point Applicants do not concede, Applicants respectfully submit that such a finding has been successfully rebutted by the data presented in the examples presented (see Tables 1-20), specification and in the additional data, appended hereto. Applicants respectfully urge that both sets of data demonstrate that specific herbicides in combination with specific safeners exhibit synergistic herbicidal activity with respect to weed control in maize crops.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Favorable action is earnestly solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP  
Attorneys for Applicants

By

  
Mark W. Russell, Esq.  
Registration No. 32,517  
745 Fifth Avenue  
New York, New York 10151  
(212) 588-0800